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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC

In the matter of:	)	
	)	
Reexamination of the Comparative Standards	)	
and Procedures for Licensing Noncommercial	)	MB Docket No. 19-3
Educational Broadcast Stations and Low	)	
Power FM Stations	)	

COMMENTS OF LOW POWER FM ADVOCACY GROUP (LPFM-AG)

I. introduction & Fair Market Value Wording in 47 CFR §§ 73.865(a)(1) Discussion

1- We, respectfully, challenge that the wording of 47 CFR §§ 73.865(a)(1) is flawed and must be reworded and changed to better handle speculation. We declare that:

a- It doesn't identify what the words "fair market value" means, therefore, gives no starting pont for depreciation.
b- With no effort to investigate every transaction, there is no effectiveness in stopping speculation.
c- It is impossible to enforce without local third party assistance from auditors, appraisors and the subpeona of bank records.

47 CFR §§ 73.865(a)(1) reads, "[n]o party may assign or transfer an LPFM license if [c]onsideration promised or received exceeds the depreciated fair market value of the physical equipment and facilities"

2- The US Supreme Court has clearly defined the legal meaning of "fair market value." In United States tax law, the definition of *fair market value* is found in the United States Supreme Court decision in the 1973 *Cartwright* case:

"The *fair market value* is the price at which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts." *United States v. Cartwright*, 411 U. S. 546, 93 S. Ct. 1713, 1716-17, 36 L. Ed. 2d 528, 73-1 U.S. Tax Cas. (CCH) ¶ 12,926 (1973)

In other words, **fair market value** is an estimate of the market value of something, based on what a knowledgeable, willing, and unpressured buyer would probably pay to a knowledgeable, willing, and unpressured seller in the market.

3- However, in numerous cases, the words “fair market value” in 47 CFR §§ 73.865(a)(1) has been improperly interpreted to mean “original retail price” or “original price paid by the licensee for used equipment.”

WBVL-LP Assignment (12/2018): (BALL-20181218ABD) REC Networks filed an Informal Objection against the assignment of WBVL-LP, Kissimmee, FL from The Broadcasting Group, Inc. to Sucuremedia, Inc. due to its interpretation that the sale violated 47 CFR §§ 73.865(a)(1). It only withdrew the objection when the licensee reduced the assignment price to reflect REC’s interpretation of 47 CFR §§ 73.865(a)(1) and the words “fair market value.” For the record, REC’s understanding of “fair market value” differed greatly from the US Supreme Court interpretation. REC’s interpretation seemed to equate fair market value with “original retail price.”

II. Current Rules Are Easy To “Game” and Impossible To Enforce

1- When a nonprofit desires to assign an LPFM license, it is not an asset of the organization, it is a public asset. It must be transfered for free. However, the studio, office, transmitter and remote equipment might be private property owned by the station and subject to part of an LPFM sale. This rule forces the station, if they wish to transfer the license, to transfer it at the depreciated “fair market value” of the equipment.

However, there is a very big loophole that adds to the question whether the FCC should take on the task of regulating private property prices at all.

For example, we ask:

a- Does the buyer have to sell all of the associated equipment in order to transfer the license? Can the FCC force the current licensee to sell station equipment during a license transfer?

b- Can a separate transaction to sell the equipment at fair market value occur at fair market value? Is it against the rules to sell the station equipment for a profit? If so, what constitutes station equipment?

c- The rule says stations may be transferred for a price equal depreciated “fair market value,” not original retail price. What is the FCC’s definition of fair market value? Is it the same as the US Supreme Court? If the licensee later sells the station building to the new licensee, is that transaction also regulated by the FCC?

d- Does the station have to report any transaction it takes to sell a piece of its equipment and the sales prices therein? Is a lawnmower used to cut the grass at the station also price controlled?

e- The rule, as written, seems to allow an LPFM the ability to sell their FM transmitter for an unlimited price (“fair market value = “willing seller/willing buyer” price defined by the US Supreme Court) in one transaction and conduct a transaction with the same party to transfer the license for free in the next transaction. How is this regulated? Is there a time period between transactions that the Commission would find acceptable, or can it be two transactions that happen at the same time?

The assignment rules for LPFM are difficult to understand, do not do anything to control LPFM station speculation, *encourage a lack of transparency* and are a burden on Commission resources. For these reasons, we ask that standard NCE-FM assignment rules apply to LPFM transactions; with the addition of a requirement to hold LPFM licenses for a minimum of one year after each assignment. We are sure this is a superior way to control speculation than the current rules allow.

III. Recommended Changes To § 73.865.

Current rule:

(a)***Assignment/Transfer:*** No party may assign or transfer an LPFM license if:

(1) Consideration promised or received exceeds the depreciated fair market value of the physical equipment and facilities; and/or

(2) The transferee or assignee is incapable of satisfying all eligibility criteria that apply to a LPFM licensee.

Modified rule:

(a)***Assignment/Transfer:*** No party may assign or transfer an LPFM license if:

(1) Licensee has not been licensed the same facility for at least 12 months prior to the proposed license assignment/transfer date; and/or

(2) The transferee or assignee is incapable of satisfying all eligibility criteria that apply to a LPFM licensee.

1- The current and clearest reading of this rule seems to indicate that, if a willing buyer wanted to pay a million dollars ($1,000,000) for an LPFM transmitter originally purchased at four thousand dollars ($4,000,) the seller would be fully capable to do so under the current rules wording. Shortly afterward, the LPFM license could easily transfer, for free. In essence, an LPFM can legally sell for $1,000,000 under today’s rules. How does this reduce speculation? How is this rule enforcable?

2- To be effective, the wording of the rule would have to change and the Commission would need to conduct a thorough investigative effort of every LPFM assignment. This would entail the full finances and tranactions between parties for months prior, review of all bank deposits and near 24/7 surveilance of each party. Can a transaction a week earlier be reviewed as part of an assignment application? How, then, can you know if party A agreed to buy a transmitter from party B for a million dollars, in exchange for a cash free transfer of party B's FCC license to party A? Doing this for every LPFM assignment would be a tremndous drain on Commission resouces.

IV. Current Rules Are Counter To The Public Interest

1- As the holder of an LPFM license, it is expected the station will operate in the public interest. However, the current LPFM rule for FCC assignments encourages "lack of effort" for licensees in producing community radio stations as there is no growth in the station value for doing so. With no financial incentive, low funded non-profits struggle to put extra investment into the on-air product of their LPFMs. The public is short-changed by an uninspired licensee who gains nothing by building a better educational radio station. No matter how much money is invested into the station programming, the station value remains the same.

2- When envisioned, LPFM stations were believed to bring quality community programming to local areas not found on the FM dial. Now, with little incentive to expand their community presence, many stations are operating with the most minimal funding. It shows on the air. The incentive to build a quality brand that can educate and inform its community is squashed by the fact there is no return on investment for the small nonprofit licensee. Many LPFMs are already drains on these organizations. Without an incentive to prvide better qualitty programming on their LPFMs, the licensees of the smallest nonprofit radio service has no incentive to produce quality programming; educating and adding culture to their coverage areas.

3- To this day, it is unclear why it was important for the FCC to remove 'speculation' from the LPFM service. After all, any speculator for an LPFM station would be nonprofit, still have to qualify for the license, be only allowed to own one station and likely be minimally funded. Those with money buy higher powered radio stations. 'Speculation' in LPFM is limited by the nature of the service and the required qualifications of the licensees. Regulating the sales price of an LPFM cannot be done without the FCC attempting to regulate the private transactions of desks, broadcast equipment, vehicles, real-estate and other items. For this reason, the rules violate free market concepts. The FCC did not assign a desk, it assigned a license. Proving that a desk was sold for "depreciated fair market value" seems a little excessive. For this reason, sales prices of LPFM should not include caps established by the desk manufacturer's retail price, minus depreciation. Further, why is the FCC involved in the already highly-regulated finances and budget lines of America's nonprofits at all. As the result of this rule, the Commission is inadvertently forcing the smallest nonprofits to lose money on private property. Moreso, why is this not the case for licensees in the NCE-FM band, where the qualifications for licensee are very similar, yet speculation of the higher powered stations has always been allowed? Why is it a greater issue for LPFM than NCE-FM?

V. Private Property Price Setting & Transaction Selection

1- The biggest problem with the rule as written is that is doesn't only set the price for the LPFM license, it forces the FCC to define the prices of ancillary private property involved in the station assignment. Staplers, copy machines, station vans, remote antennas, etc all have to be priced according to FCC approval. This is completely contrary to the Supreme Court definition of *fair market value* and seeks to establish the Commision as a trade regulator. Equipment, buildings, vehicles, desks, furniture and other items associated with the LPFM are all price regulated by this rule. Further, the only guidance is the words "fair market value;" which has capriciously been defined as "retail price" or some variation, with no common formula to establish the accepted FCC "depreciated price" for each item in previous Commision LPFM assignment proceedings. Like in the WBVL case, licensees are forced to keep reducing the sales price until *a third party drops it's objection* or until the Commission agrees that prices have been lowered sufficiently. It completely ignores the fact that a willing buyer was originally ready to pay a much higher price for the equipment (fair market value) and the orginal selling price shoudl have abided the rule adaquately. Instead, a very subjective assignment process is conducted. The wording of the LPFM assignment rule is ignored in favor of a process that satisfies third party objectors who have misinterpretaed the rule to mean "original retail price."

2- We worry that price regulating broadcast equipment, real estate, furniture and other property appraisal may be impossible to enforce without a fair market appraisal of all equipment involved in an LPFM assignment. Further, allowing manufacturers to set LPFM assignment prices via their 'manufacturer suggested retail price' does nothing to address speculation of LPFM licenses. The license might have no value during assignment, however, it is beyond precedent for any US government agency to regulate the prices of a private transaction of private property; especially without defining what constitutes as part of the sale. Typically, a station "brand" has value to a radio station during an NCE-FM assignment process. What is the formula for consideration under current LPFM assignment rules?

VI. Fair Market Value Cannot Mean "Retail Price"

1- If a guitar sells for $200 retail, does it hold that same value as a depreciation starting point throughout it's existence? The answer is, "of course not." There are many factors that play into a guitar's value, regardless if it first sold for $200.

A used guitar sold at a neighborhood pawn shop is likely less valuable than that same used guitar is it were played by Jimi Hendrix.

2- In a willing buyer/willing seller, free market system, value cannot be placed on retail selling price. Most radio station assignments are not conducted in pursuit of the equipment or the license. Most pursuits are conducted to gain the influence that station has in it's coverage area. Stations that serve their coverage areas well will naturally have more influence, and listeners, attached to them. It can easily be predicted that the fair market value of a station that is operated in the public interest will exceed that of a poorly operated station.

3- When a station is transferred, the history and hard work of those who operated it are also transferred. The reputation is transferred. Like a guitar played by Jimi Hendrix, a $4000 transmitter can suddenly become much more valuable. The studio is more valuable. The antenna is more valuable. Everything associated with the LPFM community brand has greatly increased value. As for depreciations, the starting point for such depreciation should be the Supreme Court's definition of fair market value, not the manufacturer's original retail price.

VII. Summary

In order to make the LPFM transaction process more transparent and the efforts to thwart speculation more effective, we respectfully ask the Commission to change the wording of 47 CFR §§ 73.865(a)(1) to remove the requirement that all sales must be capped at depreciated "fair market value" and instead add wording that requires all licensees of LPFM stations after assignment to hold the license for one (1) year before selling. Elsewise, we ask that the tried and proven NCE-FM assignment rules apply to LPFM assignments as well.

Respectfully submitted,

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